

Chapter 16

MISCELLANEOUS PROVISIONS AND OFFENSES*

* **Charter References:** Council authorized to adopt any state law provision by reference, § 6.6; general procedure for abatement of nuisances, § 14.2; notice to city of injury caused by city's negligence to be given to city within sixty days of occurrence of injury, § 17.1.

Cross References: Nuisances for purpose of housing code, § 12-5.

Sec. 16-1. Public place defined.

The term "public place," as used in this chapter, shall mean any street, alley, park, public building, or any place of business, grounds, parking lot, or area of assembly in the city, which is open to or frequented by the public.

Sec. 16-2. Obstructing, hindering police officer.

Any person who shall obstruct, resist, hinder, or oppose any member of the police force, or any peace officer in the discharge of his duties as such shall be guilty of a misdemeanor.

Sec. 16-3. Indecent, obscene conduct in public place.

It shall be unlawful for any person to be engaged in any indecent or obscene conduct in any public place.

Sec. 16-4. Noisy, riotous behaviour.

Any person who shall make or assist in making any noise, disturbance or improper diversion, or any rout or riot, by which the peace and good order of the neighborhood is disturbed, shall be guilty of disorderly conduct.

Sec. 16-5. Disturbance in public places.

Any person who shall make or incite any disturbance or contention in any tavern, store, grocery, manufacturing establishment, or any other business place, or any street, lane, alley, highway, public building, grounds, or park, or at any election or other public meeting where citizens are peacefully and lawfully assembled or engaged in the pursuit of their occupation shall be guilty of a misdemeanor.

State Law References: Disturbing meetings, M.S.A., § 28.366 et seq.

Sec. 16-6. Unlawful assembly.

Any person who shall individually or with others, stand, loiter, stroll, sit, lie or collect in a group or crowd for any unlawful or mischievous purpose or without reasonable cause, which shall annoy, inconvenience, or interfere with others in any place in the city, public or private, and who shall refuse to leave such place upon request of any person having supervision thereof or of any member of the police force, or any other peace officer, shall be guilty of a misdemeanor.

Sec. 16-7. Obscene, vile language in public place.

Any person who shall utter vile, vulgar, or obscene language in any public place shall be guilty of a misdemeanor.

State Law References: Indecent language in the presence of women or children, M.S.A., § 28.569.

Sec. 16-8. Abusive, vulgar language over telephone.

Any person who telephones any other person or causes any other person to be telephoned and uses any vulgar, indecent, obscene, threatening, harassing or offensive language, or suggesting any lewd or lascivious act over any telephone, shall be guilty of a misdemeanor.

Sec. 16-9. Insulting, molesting another by word, sign, motion.

Any person who shall insult, accost or molest any person in any public place, either by word of mouth, sign or motion shall be guilty of a misdemeanor.
(Ord. No. 865, § 1, 7-28-75)

Sec. 16-10. Engaging in a fight.

Any person who shall engage in a fight in any public place shall be guilty of disorderly conduct.
State Law References: Assault and battery generally, M.S.A., § 28.276; committing mayhem, § 28.629.

Sec. 16-11. Jostling, roughly crowding persons.

It shall be unlawful for any person to be found jostling or roughly crowding people unnecessarily in a public place.

Sec. 16-12. Public intoxication and endangering the safety of a person or property or causing a public disturbance.

It shall be unlawful for any person who is intoxicated in a public place to endanger directly the safety of another person or of property or to act in a manner that causes a public disturbance.
(Ord. No. 925, § 1, 2-13-78)

Sec. 16-13. Throwing stone, missile, etc., at train, automobile, etc.

Any person who shall throw any object at any vehicle which is traveling, parked, or standing in any public place or in any driveway with the intent to cause injury, damage, or defacement thereto, or which action could be reasonably anticipated to have such effect, shall be guilty of a misdemeanor.

State Law References: Throwing stone or missile at train, automobile, etc., M.S.A., § 28.626.

Sec. 16-14. Destruction of property.

Any person who shall wilfully destroy, damage, or in any manner deface any property not his own; or any public school building or park, or any equipment or furnishings thereof or therein, or any public or private building or park, including any equipment, or furnishings thereof or therein, or any bridge, fire hydrant, alarm box, streetlight, street sign, parking meter, or shade tree belonging to the city or located in the public places of the city; or destroy, take or meddle with any property belonging to the city or remove any property from the building or place where it may be kept, placed, or stored, without authority from the city council or another authorized official custodian of such property shall be guilty of a misdemeanor.

State Law References: Malicious and wilful mischief and destruction, M.S.A., § 28.609 et seq.; malicious destruction of property by minors, § 27A.2913; wrongful removal of plants, § 27.2919.

Sec. 16-15. Discharging firearms, slingshots, bows and arrows.

It shall be unlawful for any person to fire or discharge, within the city, any air rifle, shotgun, rifle, revolver or other firearms, or any slingshot, or bow and arrows except on such places which have been approved by the city manager upon recommendation by the chief of police. This section shall not apply to any peace officer or to any member of the armed forces of the United States, on active duty.

State Law References: Firearms and weapons, M.S.A., § 28.419 et seq.

Sec. 16-16. Hunting, pursuing wild animals, birds, waterfowl, etc.

- (a) It shall be unlawful for any person to hunt, pursue, worry or kill any wild animals, birds or waterfowl by any means whatsoever within the city or upon property owned by the city, wherever located, except that the foregoing shall not apply to:
 - (1) The use of live traps under the lawful authority of and supervision by either the city manager or the County of Midland Animal Control Center;

- (2) Police officers acting in the line of duty; or
 - (3) Training or practicing a dog upon game birds and such animals as may be lawfully hunted with a dog during the periods established or authorized by state statute and any rules or regulations issued thereunder.
- (b) Notwithstanding subsection (a), the City Manager may authorize the hunting of deer by bow and arrows on clearly defined land areas within the City of Midland provided that all of the following are obtained by the City Manager prior to granting authorization:
- (1) a written request filed with the city manager by the owner of such land,
 - (2) inspection of the requested land area by the City of Midland and the Michigan Department of Natural Resources (MDNR),
 - (3) a favorable recommendation in writing by officials of the MDNR, and
 - (4) a favorable recommendation by the Chief of Police.

(Ord. No. 1032, § 1, 1-10-83; Ord. No. 1076, § 1, 10-1-84; Ord. No. 1204, § 1, 11-19-90; Ord. No. 1550, § 1; 11-11-02)

Sec. 16-17. Posting handbills, marking walls, etc.

It shall be unlawful to post handbills on or to, in any manner, mar or mark the walls of any public or private building, fence, tree or pole within the city.

Cross References: Posting signs or posters on or in streets or sidewalks, § 22-2.

Sec. 16-18. Spitting, placing offensive material in public places, carriers.

Any person who shall spit on the floor or seat of any public carrier, or any floor, wall, seat, or equipment of any place of public assemblage, or who shall place or cause to be placed any other offensive, deleterious, harmful, damaging, noxious, nauseous, or obnoxious material thereon or therein shall be guilty of a misdemeanor.

Sec. 16-19. Vagrancy.

It shall be unlawful for any person to be a vagrant.

Sec. 16-20. Begging in public place.

It shall be unlawful for any person to be found begging in a public place.

Sec. 16-21. Engaging in unlawful business, occupation.

It shall be unlawful for any person to engage in an illegal occupation or business.

Sec. 16-22. Loitering generally.

Any person who shall collect or stand in crowds, or arrange, encourage, or abet the collection of persons in crowds in any public place for any unlawful or mischievous purpose, or who shall loiter on any street or sidewalk or in any park or public building, or conduct himself in any public place so as to obstruct the free and uninterrupted passage of the public, create a disturbance by which the peace and good order of the neighborhood is disturbed or interfere with the peaceful and lawful conduct of any public or private business, and who shall fail to disperse upon request of a law enforcement officer of the city or state shall be guilty of a misdemeanor.

State Law References: Riot and unlawful assembly, M.S.A., § 28.789 et seq.

Sec. 16-23. Loitering in, near unlawful business.

It shall be unlawful for any person to knowingly loiter in or about any place where an illegal occupation or business is being conducted.

Sec. 16-24. Loitering to solicit legal employment, or to become surety on bond.

It shall be unlawful for any person to loiter in or about any police station, police headquarters building, county jail, hospital, court building or any other public building or place for the purpose of soliciting employment of legal services or the services of sureties upon criminal recognizances.

Sec. 16-25. Prostitution.

It shall be unlawful to be a prostitute.

State Law References: Houses of prostitution, M.S.A., § 28.131.

Sec. 16-26. Peeping tom.

It shall be unlawful to be a window peeper.

Sec. 16-27. Prowlers prohibited.

It shall be unlawful for any person to prowl about any public place, or any property not his own.

Sec. 16-28. Unreasonable, loud, etc., noises prohibited.

It shall be unlawful for any person to create, assist in creating, permit, continue or permit the continuance of any unreasonable, loud, disturbing or unnecessary noise in the city.

Sec. 16-29. Noises specifically forbidden.

The following acts are declared to be unlawful:

- (a) For the operator of any vehicle to sound any horn or other warning device except when reasonably necessary for the prevention of accidents.
- (b) For any person to operate a motor vehicle upon any street in the city unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent unnecessary or unusual noise and annoying smoke.
- (c) To operate any vehicle which by reason of any mechanical or other defect causes unnecessary noise.
- (d) To use any gong or siren upon any vehicle other than police, fire or other emergency vehicles.
- (e) To use any loudspeakers and amplifiers for advertising or other purposes. However, amplifiers and loudspeakers may be used in connection with municipal functions, civic and community functions, and holiday gatherings, upon securing the prior permission of the city council. Notwithstanding the foregoing, the city council may delegate to the director of parks and recreation the authority to grant permission to use amplified sound within the city parks pursuant to rules and regulations established under section 17-9 of this Code.
- (f) To use any drum, bells or other nonamplified instrument or device for the purpose of attracting attention to or in conjunction with the street sale of merchandise if the creation of noise thereby shall be unreasonably disturbing to other persons in the vicinity.

(Ord. No. 887, § 1, 5-24-76; Ord. No. 1001, § 1, 6-15-81)

Cross References: Traffic, Ch. 24.

Sec. 16-30. Obscene literature, recordings, pictures and motion pictures.

Any person who knowingly either sells, lends, gives away, distributes, shows or transmits, or offers either to sell, lend, give away, distribute, show or transmit, or has in his possession with intent either to sell, lend, give away, distribute, show or transmit or advertise in any manner, or who otherwise knowingly offers for either loan, gift, sale or distribution, any obscene, lewd, lascivious,

filthy or indecent, sadistic or masochistic book, magazine, pamphlet, newspaper, story book, writing paper, pornographic record, picture, drawing, photograph, motion picture film, figure, image, wire or tape recording or any written, printed or recorded matter of an indecent character which may or may not require a mechanical or other means to be transmitted into auditory, visual or sensory representations of such character, shall be guilty of a violation of this Code.

For the purpose of this section, possession of six or more identical copies, or six or more articles of any obscene, lewd, lascivious, filthy or indecent book, magazine, pamphlet, newspaper, writing paper, pornographic records, picture, drawing, photograph, slide, motion picture film, figure, image, wire recorded matter of an indecent character, shall be prima facie evidence of possession with intent to sell, lend, give away, distribute, show or transmit the thing.
(Ord. No. 780, § 1, 8-30-71)

Sec. 16-31. Obscene literature, recording or image; impact upon average person of community.

The test to be applied in cases under sections 16-30 and 16-31 shall not be whether sexual desires or sexually improper thoughts would be aroused in those comprising a particular segment of the community, the young, the immature or the highly prudish, or would leave another segment, the scientific or highly educated or the so-called wordly wise men and sophisticated, indifferent and unmoved. But such test shall be the effect of the book, picture or other subject to complaint considered as a whole, not upon any particular class, but upon all those whom it is likely to reach, that is, its impact upon the average person in the community. The book, picture, or other subject of complaint must be judged as a whole in its entire context, not by considering detached or separate portions only, and by the standards of common conscience of the community of the contemporary period of the violation charged.
(Ord. No. 780, § 2, 8-30-71)

Sec. 16-32. Loitering in or about school buildings or on school grounds by nonstudents or other unauthorized persons during regularly scheduled school hours.

It shall be unlawful for any person to enter or remain in any public, private or parochial school building, or to enter or remain on the grounds or property of any public, private or parochial school during regularly scheduled school hours, except when in attendance as a regularly-enrolled student, as an administrator or employee, or when engaged in legitimate school business or pursuits.
(Ord. No. 927, § 1, 4-3-78)

Sec. 16-33. Willfully or maliciously making or causing noise or disturbance in school buildings or on school grounds by nonstudents or other unauthorized persons during regularly-scheduled school hours.

It shall be unlawful for any nonstudent or other unauthorized person to willfully or maliciously make or cause to be made during regularly-scheduled school hours any noise or disturbance in, on or in the close proximity of any school building or the grounds or property thereof by which the peace, quiet or good order of any public, private or parochial school is disturbed.
(Ord. No. 927, § 1, 4-3-78)

Sec. 16-34. Fireworks.

(a) Definitions.

Consumer fireworks means fireworks devices that are designed to produce visible or audible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low-impact fireworks.

Display fireworks means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

Firework or fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, designated for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

Low-impact fireworks means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

Novelties means that term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

- (1) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cup.
- (2) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (1) are used, that are constructed so that the hand cannot come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.
- (3) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

(b) Prohibition on use of consumer fireworks.

No person shall ignite, discharge or use consumer fireworks within the city, except this prohibition shall not preclude any person from the ignition, discharge, and use of consumer fireworks after 11:00 a.m. on the following days, consistent with Section 7(2) of Public Act 256 of 2011, as amended, and all other applicable local, state, or federal regulations:

- 1) December 31 until 1:00 a.m. on January 1
- 2) The Saturday and Sunday immediately preceding memorial day until 11:45 p.m. on each of those days
- 3) June 29 to July 4 until 11:45 p.m. on each of those days
- 4) July 5, if that date is a Friday or Saturday, until 11:45 p.m.
- 5) The Saturday and Sunday immediately preceding labor day until 11:45 p.m. on each of those days

A person shall not ignite, discharge, or use consumer fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission. This prohibition and restriction shall not apply to the ignition, discharge or use of consumer or display fireworks for educational and/or training purposes as approved, in writing, by the Fire Chief or his designee.

(c)

It shall be unlawful for any person, firm, partnership or corporation to offer for sale, expose for sale, keep with the intent to sell at retail, or sell at retail to any person who has not yet attained the age of eighteen (18) years of age any blank cartridge, toy pistol, toy cannon, toy cane or toy gun in which explosives are used; the type of unmanned balloon which requires fire underneath to propel the same; firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs or other fireworks of like construction; or any fireworks containing any explosive or inflammable compound or any tablets or other devices commonly used and sold as fireworks, containing nitrates, chlorates, oxolates, sulfides of lead, barium, antimony, arsenic, mercury, nitroglycerin, phosphorous or any compound containing any of the same or other modern explosives.

(d)

Not included within the foregoing prohibition are model rockets and model rocket engines designed, sold and used for the purpose of propelling recoverable aero models. Also not included are sparklers containing not more than one hundred twenty-five ten thousandths (.0125) pounds of burning portion per sparkler, flitter sparklers in paper tubes not exceeding one-eighth (1/8) inch in diameter, toy snakes not containing mercury, if packed in cardboard boxes with not more than twelve (12) pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed thereon, toy pistols, toy canes, toy guns or other devices manufactured to utilize paper and/or plastic caps containing not more than twenty-five hundredths (.25) of a grain of explosive content per cap, or said paper and/or plastic caps themselves, the sale of which shall be permitted at all times.

(e) Enforcement.

The Fire Chief, his designees and/or sworn law enforcement officers are authorized to enforce the provisions of this ordinance. Violations of 16-34(b) shall be punishable by the issuance of a civil infraction as provided in Chapter 34 and in the amount of \$1,000.00 for each violation with the fee distributed as specified in Section 7(3) of Public Act 256 of 2011, as amended. The issuance

of one (1) municipal civil infraction fine for any violation shall not excuse the violation or permit it to continue. Each violation constitutes a separate offense.

(f) Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a Court of competent jurisdiction, the remainder of the ordinance shall not be affected.

(g) Repeal.

All regulatory fireworks provisions contained in other city ordinances which are inconsistent with the provisions of this ordinance are repealed with the exception of the authority granted to the Director of Parks and Recreation and the Fire Chief under the Parks Rules and Regulations.

(Ord. No. 931, § 1, 5-24-78; Ord. No. 1730, § 1, 06-25-12; Ord. No. 1751, § 1, 09-30-13; Ord. No. 1757, § 1, 05-19-14; Ord. No. 1822, § 1, 04-22-19)

Sec. 16-35. Regulation of hours of businesses in the Neighborhood Commercial “NC” District.

No business establishment of any kind that is permitted to operate or is operating in a Neighborhood Commercial “NC” District pursuant to the provisions of the zoning ordinance of the City of Midland shall be open or operate between the hours of 11:00 p.m. and 7:00 a.m. unless otherwise exempt from restrictions on hours of operation by statutes or regulations of the State of Michigan. (Ord. No. 941, § 1, 11-20-78; Ord. No. 1588, § 1, 02-21-05)

Sec. 16-36. Diving, jumping from bridges.

It shall be unlawful for any person to jump or dive from any bridge in the city. Signs shall be posted prohibiting jumping or driving on all bridges in the city. Notwithstanding the foregoing, the word "bridge" or "bridges" shall not be deemed to include a bridge or bridges located exclusively on private property. (Ord. No. 1108, § 1, 7-14-86)

Sec. 16-37. Trespassing or unlawful entry upon lands or premises of another.

Any person who shall willfully enter upon the lands or premises of another without lawful authority, after having been forbidden so to do by the owner or occupant, agent or servant of the owner or occupant, or any person being upon the land or premises of another, upon being notified to depart therefrom by the owner or occupant or the agent of either, who, without lawful authority, neglects or refuses to depart therefrom, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than thirty (30) days or by a fine of not more than fifty dollars (\$50.00), or both, in the discretion of the court. If it shall appear that the lands or premises in question have been conspicuously posted by a sign or signs approved by the City of Midland as to content, size and location which forbids trespassing in general, trespassing between certain specified times or entry upon said lands or premises when not engaged in lawful business with the owner or occupant, such a showing shall be prima facie evidence that a person found on the land or premises who is not engaged in lawful business with the owner or occupant is there without lawful authority and has been forbidden to enter or notified to depart as required by this section. For all purposes of this section, the term "engaged in lawful business" shall mean going to or from or presence inside a lawful business establishment located on said land or premises during the time that the business establishment is open for business. (Ord. No. 1146, § 1, 5-9-88)

Sec. 16-38. Use of alcoholic beverages and drugs at open house parties.

(a) Definitions. For the purposes of this section, the following terms shall be defined as follows:

Adult means a person seventeen (17) years of age or older.

Alcoholic beverage means any alcoholic liquor as defined now and hereafter by the Public Acts of the State of Michigan. Currently, "alcoholic liquor" is defined by Section 436.2 of the Compiled Laws of the State of Michigan (MCLA 436.2; MSA 18.972).

Control means any form of authority, regulation, responsibility or dominion, including a possessory right.

Drug means a controlled substance as defined and described now or hereafter by the Public Acts of the State of Michigan. Currently, controlled substances are defined and described by Sections 333.7101 through 333.7501 of the Compiled Laws of the State of Michigan (MCLA 333.7101 through 333.7545; MSA 14.15(7101) through 14.15(7545)).

Minor means a person not legally permitted by reason of age to possess, consume or purchase alcoholic liquor as described now or hereafter by the Public Acts of the State of Michigan. Currently, such a person is described by Section 436.33b of the Compiled Laws of the State of Michigan (MCLA 436.33b; MSA 18.1004(2)).

Open house party means a social gathering at a residence or premises of persons in addition to the owner or those with rights of possession or their immediate family members.

Residence or premises means a motel room, hotel room, home, apartment, condominium or other dwelling unit, including the curtilage of the dwelling unit, or a hall, meeting room or other place of assembly, whether occupied as a dwelling or specifically for social functions, and whether owned, leased, rented or used with or without compensation.

(b) No adult who is both physically present and in control of any residence or premises shall allow an open house party to take place at the residence or premises if any alcoholic beverage or drug is possessed or consumed at the residence or premises by any minor where the adult knew or reasonably should have known that any alcoholic beverage or drug was in the possession of or being consumed by a minor at the residence or premises and where the adult failed to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug at the residence or premises.

(c) The provisions of this section shall not apply to:

(1) The consumption, use or possession of alcoholic beverages by a minor in the presence of his or her:

- a. Parent or legal guardian or a person placed in the position of a parent by such parent or legal guardian pursuant to Section 405 of Article 4 of Public Act 642 of the Public Acts of the State of Michigan of 1978, the Revised Probate Code, as amended (MCLA 700.405, MSA 27.5405);
- b. Grandparent; or
- c. Aunt or uncle who is not a minor.

(2) The consumption, use or possession of a drug by a minor pursuant to a lawful prescription for such drug.

(3) Religious observances or prescribed medical treatments.

(4) The possession by a minor of alcoholic beverages or lawfully prescribed drugs incidental to the lawful employment of such minor.

(d) Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.

(Ord. No. 1279, § 1, 10-18-93)

SEC. 16-39. Marihuana establishments prohibited.

Marihuana establishments are prohibited within the city of Midland pursuant to the Michigan Regulation and Taxation of Marihuana Act, Section 6.1.

(Ord. No. 1819, § 1, 02-18-19)